Understanding Directors & Officers Insurance

Presented by ABI Insurance for
Association Management Services NW

Vern Newcomb, CIRMS®

With over 40 years in the insurance industry, Vern Newcomb specializes in community association insurance. He has built a solid reputation throughout the Pacific Northwest for his experience and knowledge of community associations.

As a certified Community Insurance and Risk Management Specialist (CIRMS®), Vern's skills and understanding of risk management help clients minimize their risks and protect their investments. He serves as association director for ABI Insurance and leads the company's 10-member community association team.

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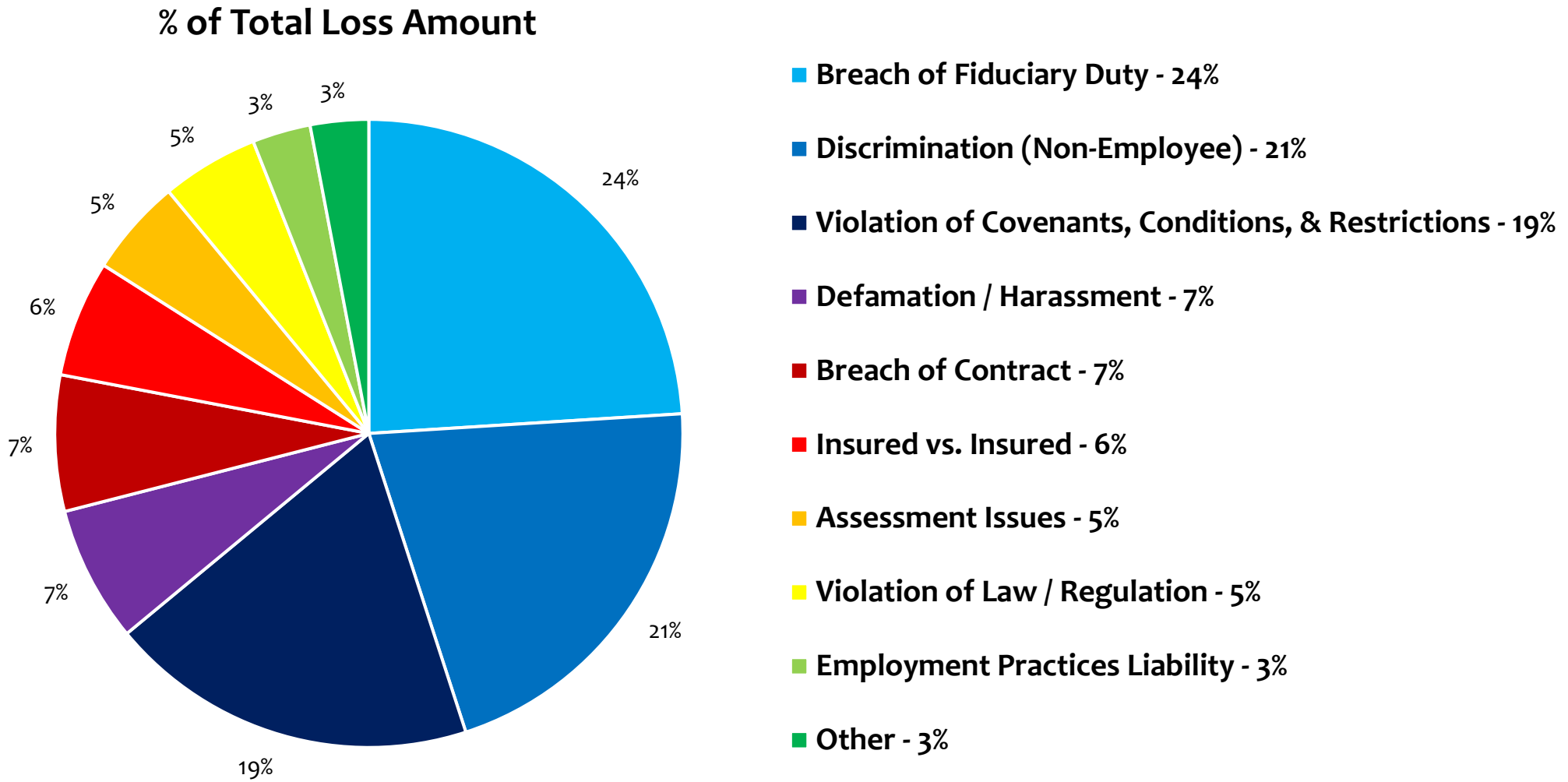
Our Goal Today

To explore the top Directors & Officers (D&O) liability claims impacting community associations and how to mitigate these risks.

- Common D&O claims in community associations
- Strategies for risk mitigation
- D&O insurance coverage overview

Common D&O Claims in Community Associations



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Risk Management Strategies

Educate Board Members on Fiduciary Duties

- Duty of care – act with reasonable care to make informed decisions.
- Duty of loyalty – prioritize associations interests over own interests.
- Duty of good faith – expected to act honestly and transparently.
- Duty of confidentiality – expected to protect confidential information.
- Duty of disclosure – expected to disclose information that effects the interests of the association or conflicts of interest.

Educate Board Members on Responsibilities

- Collect Dues
- Maintain the Association
- Enforce the rules

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Risk Management Strategies

The Business Judgment Rule

- Protects board from trivial lawsuits by assuming, unless proven otherwise, that the board is acting in good faith and upholding their fiduciary duties.
- It is assumed that boards must make controversial / risky decisions, and the "correct" decision will not always be made, ***but if the board acts in good faith and maintains fiduciary duties (use 3rd party experts) then the court will not question their decisions.***

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How Claims Can Be Avoided and Mitigated

1) **Follow the rules**
   - Know the bylaws and other governing documents.
   - Ensure that new association members receive and sign-off on the documents when they move into the community.

2) **Make sure the rules are current**
   - Conduct periodic reviews of the governing documents and retain professionals to make sure they are compliant with current laws.

3) **Elect board members who are committed to volunteering for the association**
   - Make sure potential board members know what the job entails and provide the board with training.

4) **Hire professionals**
   - Counsel should be retained for major transactions.
   - Utilize professional managers to help support the board's management activities.
   - Contact a CPA to assist with tax, financial, and audit related services
   - Consult an insurance broker to assist with insurance needs and questions

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How Claims Can Be Avoided and Mitigated (continued)

5) **Keep good records**
   - Record minutes of board meetings and document board activities
   - Complete financial records
   - Keep complaint logs

6) **Operate like a business**
   - Follow basic rules for running a meeting – Roberts Rules of Order – to keep emotions and personality conflicts from interfering with association governance.

7) **Immediately notify an insurer of claims**
   - Most D&O policies require associations to provide timely notice of claims, as well as notice of circumstances that may later give rise to a claim.
   - Insurance carriers are in the business of risk management and can assist in early resolution of claims or potential claim situations.

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D&O Insurance Coverage Overview

Broad Definition of Insured

- Past / Present / Future – Officers, directors, employees, volunteers, committee members, spouses of board members, and the property managers

Limited Exclusions:

- Non-money damage exclusion
- Discrimination exclusion
- Employment practices exclusion
- Insured vs. insured exclusion
- Breach of contract exclusion
- Noise exclusion

Special Thanks

Thank you to Kevin Davis Insurance Services and IHG Insurance for generously allowing us to use their content and graphics in our presentation.

We appreciate their support and willingness to share these materials.

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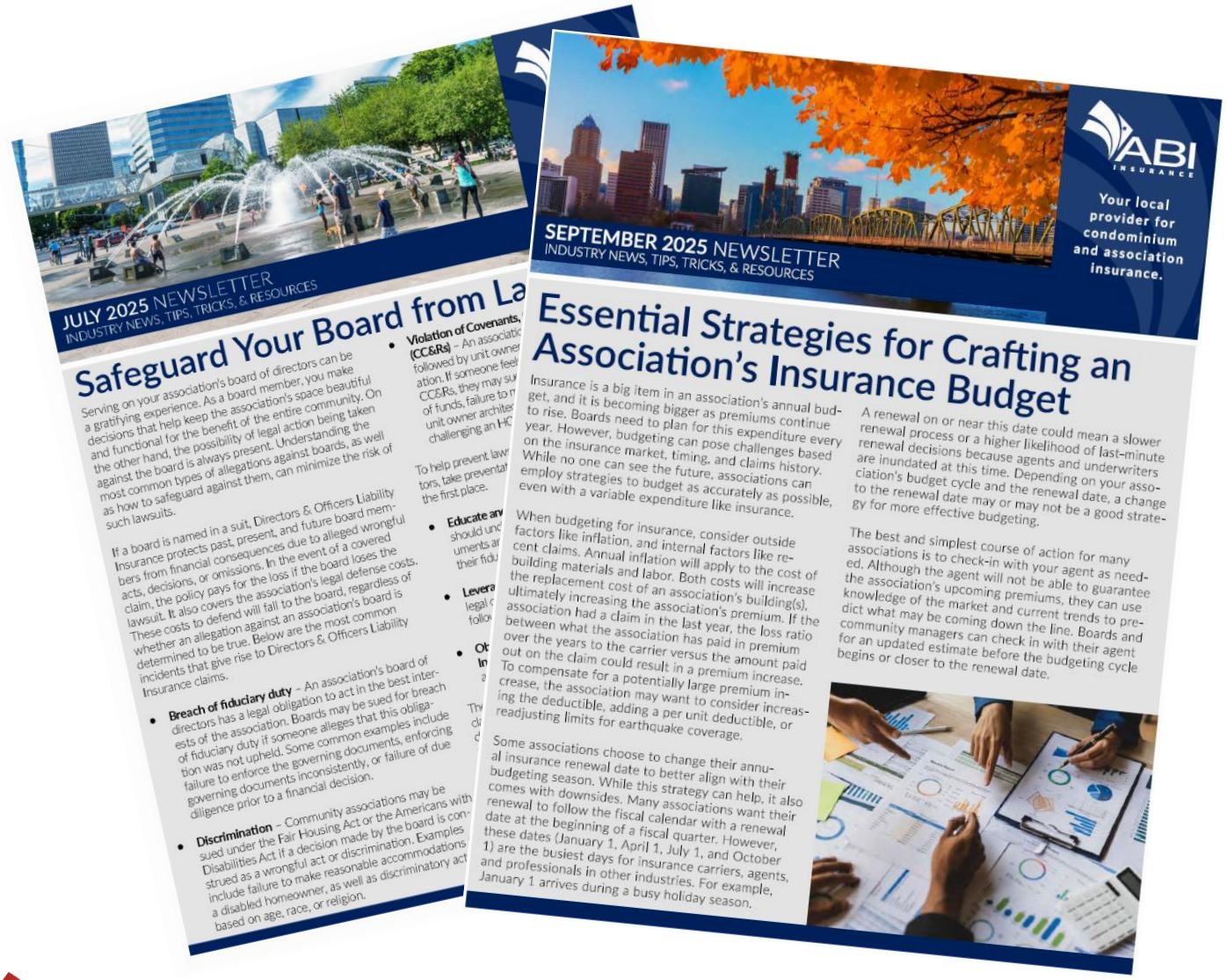

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Thank You

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